IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.713 OF 2005

Mrs. Nola Jonathan Ranbhise .. Appellant

Vs.

Malini Ebenezer Baker & Anr. .. Respondents

Mr. G.S. Godbole for the appellant.
Mr. A.V. Anturkar with Ms. Vinita V. Bakre Shashtri for Respondents.

CORAM: B.H. MARLAPALLE, J.

Date : October 07, 2005.

P.C.:

1. Heard Mr. Godbole, the learned counsel for the appellant-defendant in Regular Civil Suit No.1723 of 1998 and Mr. Anturkar, the learned counsel for the respondent-plaintiff in the said suit.

2. The defendant had filed an application at Exh.27 in RCS No.1723 of 1998 on or about 18/8/1999 claiming to be an application under Section 9A of C.P.C. It was contended by the defendant in the said application that in Darkhast No.209 of 1990 the defendant had filed a third party application which has been registered as Misc. Application No.76 of

1998 and in the said proceedings an application at Exh.12 came to be filed by him under Order XXI Rule 101 of C.P.C. Based on this application it was contended that in view of the reliefs sought for in the third party application i.e. M.A. No.76 of 1998 and Exh.12 therein, the suit filed by the plaintiff was not maintainable because the prayers made in the third party application were in paramateria with the prayers made in the fresh suit. The learned Judge of the trial court framed following two preliminary issues:-

(a) Whether the court has jurisdiction to try the suit?

(b) What order?

2A. After hearing both the parties, the learned Judge of the trial court was pleased to allow the application at Exh.27 by answering the preliminary issue in favour of the defendant. The respondent thereafter filed Civil Appeal No.844 of 1999 which has

been allowed by the learned 6th Additional District Judge at Pune vide his Judgment and Order dated 27/8/2002. Hence this appeal.

3. Initially the defendant had filed Second Appeal and that was allowed to be converted into an appeal from order. The learned Judge of the trial court in his order dated 22/9/1999 held that the reliefs prayed for below Exh.12 in Darkhast No.209 of 1990 were same as prayed for in the suit and, therefore, he held that he had no jurisdiction to try the suit as the same was barred under Order XXI Rule 101 of C.P.C. The learned Judge of the Lower Appellate Court on perusal of the prayers made in both the proceedings concluded that the reliefs sought were not the same. A copy of the decree passed in Civil Suit No.1025 of 1989 was on the record before the courts below and the proceedings in Darkhast No.209 of 1990 along with M.A. No.76 of 1998 were also on record. The learned Judge of the Lower Appellate Court is right in his findings that the reliefs prayed for in the suit and in the third party application in M.A. No.76 of 1998 were not the same in their

entirety. Some reliefs prayed for in the suit by the plaintiff have not been prayed by the defendant in the third party proceedings or application at Exh.12.

4. Notwithstanding the above findings of the Lower Appellate Court, which findings appear to be cogent, the trial court fell in error in proceeding to entertain an application under Section 9A of C.P.C. Even on the defendant's own pleading, his case was that a fresh suit was not maintainable on account of the third party application filed by him and the reliefs sought for in the said proceedings. It was not an application on the issue of jurisdiction to be decided under Section 9A of C.P.C. The language of Rule 101 of Order XXI clearly goes to show that adjudications of all issues, including the preliminary issue, can be dealt with and no separate suit need be filed. It is open for the court to frame the issues in a separate suit under Order XIV and including the issue regarding the maintainability. The provisions of Section 9A cannot be invoked for deciding the question whether the suit was maintainable on the ground that the reliefs prayed for in the suit were

already covered by some other proceedings pending between the parties. In an application under Section 9A, the issue of jurisdiction alone can be dealt with and the jurisdiction could be on account of territorial jurisdiction or pecuniary jurisdiction or jurisdiction which is barred by a special statute or there is an implied bar etc.

5. Under the circumstances, the view taken by the Lower Appellate Court does not call for any interference in this appeal and, therefore, the appeal fails. It is hereby dismissed in limine. Interim order, if any, stands vacated.

(B.H. Marlapalle,J.)